

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #10	CCRB Case #: 201508088	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/18/2015 12:00 PM	Location of Incident: § 87(2)(b) second floor, and 42nd Precinct stationhouse	Precinct: 42	18 Mo. SOL 3/18/2017	EO SOL 3/18/2017	
Date/Time CV Reported Sat, 09/19/2015 1:00 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Tue, 09/22/2015 1:41 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Danny Aguilar	2496	941319	042 PCT
2. POM Edward Bauccio	23120	952450	042 PCT
3. POM Robert Warkenthien	16200	953558	042 PCT
4. SGT Yishin Park	3688	939179	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Ginina Diaz	23959	952678	042 PCT
2. SGT Nanhao Chen	04985	944428	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Danny Aguilar	Discourtesy: At § 87(2)(b) Sgt. Danny Aguilar spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.SGT Danny Aguilar	Abuse: At § 87(2)(b) Sgt. Danny Aguilar refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
C.POM Edward Bauccio	Abuse: At § 87(2)(b) PO Edward Bauccio refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
D.POM Robert Warkenthien	Abuse: At § 87(2)(b) PO Robert Warkenthien refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
E.POM Robert Warkenthien	Discourtesy: At § 87(2)(b) PO Robert Warkenthien spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F.SGT Yishin Park	Abuse: Inside the 42nd Precinct stationhouse, Sgt. Yishin Park did not process § 87(2)(b)'s complaint regarding officers.	§ 87(2)(b)

Case Summary

On September 18, 2015, after being involved in a dispute with her adult son, § 87(2)(b) called 911 to request officer assistance at her son's residence located at § 87(2)(b), in the Bronx. When PO Robert Warkenthien and PO Edward Bauccio arrived, § 87(2)(b) advised the officers that she had a dispute with her son, and that she needed to retrieve her clothes from his apartment, where she had previously stayed as a guest. § 87(2)(b) told the officers that her son was mentally unstable and possibly owned guns. Shortly thereafter, Sgt. Danny Aguilar and PO Ginina Diaz arrived. All of the officers and § 87(2)(b) then proceeded to her son's apartment, located on the second floor. The officers knocked on the apartment door for some time, without a response. When § 87(2)(b) asked the officers to instruct her son to open the door, Sgt. Aguilar allegedly told § 87(2)(b) to "shut the hell up." (**Allegation A**) After knocking for approximately 5 minutes, and still without a response, the officers told § 87(2)(b) that they would not knock any further. § 87(2)(b) who believed Sgt. Aguilar, PO Warkenthien and PO Bauccio were unprofessional and discourteous, asked the three officers for their names and shield numbers. Sgt. Aguilar, PO Bauccio, and PO Warkenthien provided their names, but allegedly refused to provide their shield numbers (**Allegations B, C, D**). Prior to leaving the scene, PO Warkenthien allegedly told § 87(2)(b) "we're not getting shit for you." (**Allegation E**). § 87(2)(b) then went to the 42nd Precinct stationhouse to file a complaint against the three officers, and Sgt. Yishin Park allegedly refused to process her complaint against the officers (**Allegation F**) (See: Board Review – § 87(2)(b)'s CCRB complaint; § 87(2)(b)'s CCRB Statement). § 87(2)(b) was not arrested or issued any summonses as a result of the incident. There is no video footage documenting the incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- Notice of Claim results are pending.
- In the past 10 years, § 87(2)(b) has not been convicted of any crimes.

Civilian and Officer CCRB Histories

§ 87(2)(b) has filed one other CCRB complaint (#§ 87(2)(b)), § 87(2)(b)

Sgt. Aguilar has been a member of service for nine years, during which he has been a subject in 11 CCRB cases and 18 charges, two of which have been substantiated (CCRB # 201502107: substantiated Abuse of Authority and Discourtesy allegations, resulting in formalized training).

§ 87(2)(g)

PO Warkenthien has been a member of service for 3 years and this is his first CCRB complaint.

PO Bauccio has been a member of service for 3 years and this is his first CCRB complaint.

Sgt. Park has been a member of service for 10 years, during which he has been a subject in 3 CCRB cases and 10 charges, none of which have been substantiated. § 87(2)(g)

Findings and Recommendations

Subject Officer Identification

§ 87(2)(b) stated that a tall, thinly built Hispanic male, who she identified as a Sergeant, told her to “shut the hell up.” § 87(2)(g)

§ 87(2)(b) stated that all three of the male officers she interacted with refused to provide their shield numbers. § 87(2)(g)

§ 87(2)(b) stated that a white male officer whose name began with “W,” told her “we’re not getting shit for you.” § 87(2)(g)

§ 87(2)(b) stated that an Asian male officer at the stationhouse, approximately 5’5” tall and in his 40s, refused to process her complaint against officers. Sgt. Park, a § 87(2)(b) old, 5’5” tall Asian male, was the tour 2 Desk Sergeant. § 87(2)(g)

Allegations not pleaded

- **Discourtesy:** § 87(2)(b) who briefly witnessed the incident, stated that he heard someone use the word “fuck” in the hallway. § 87(2)(g)
- **Threat of arrest:** § 87(2)(b) alleged that Sgt. Aguilar informed her that she would be arrested for trespassing if she returned to the building. It is undisputed that § 87(2)(b) did not permanently reside at § 87(2)(b) at the time of the incident, and that she was involved in a dispute with the legal resident of the apartment. § 87(2)(g)

Allegation A: Discourtesy - At § 87(2)(b) Sgt. Danny Aguilar spoke discourteously to § 87(2)(b)

It is disputed whether Sgt. Aguilar told § 87(2)(b) to “shut the hell up.”

In her CCRB testimony, § 87(2)(b) stated that when the officers first began knocking on the apartment door, she asked the officers to knock louder and ring the bell. When she heard her son’s dog bark from inside the apartment, § 87(2)(b) felt confident that her son was inside, and asked the officers to instruct her son to open the door and tell him that she just needed some

things from inside. In response, Sgt. Aguilar allegedly told § 87(2)(b) to “shut the hell up” and instructed her to stand further down the hallway, away from her son’s door. In response, § 87(2)(b) stated “don’t tell me to shut up.” § 87(2)(b) stated that a neighbor from an apartment directly opposite her son’s, briefly came outside to see what was happening (See § 87(2)(b)’s CCRB Statement).

In his CCRB testimony, Sgt. Aguilar stated that neither he nor any other officer on the scene used profanity or spoke discourteously towards § 87(2)(b). Sgt. Aguilar described § 87(2)(b) as “highly irate” and uncooperative. As he was knocking on the door, § 87(2)(b) persistently screamed at him, directed him to take the door down, and refused to comply when he instructed her to stand away from the door (See: Board Review – Sgt. Aguilar’s Memo Book; Sgt. Aguilar’s CCRB Statement).

PO Bauccio, PO Warkenthien, and PO Diaz all testified that they did not hear Sgt. Aguilar tell § 87(2)(b) to “shut the hell up.” PO Bauccio and PO Warkenthien corroborated Sgt. Aguilar’s account that § 87(2)(b) was irate and noted in their memo books that she was “uncooperative and rude” (PO Warkenthien), and “very hostile” (PO Bauccio) (See: Board Review – PO Warkenthien’s and PO Bauccio’s Memo Books; PO Warkenthien’s and PO Bauccio’s CCRB Statements).

§ 87(2)(b) the neighbor who briefly opened his door, provided a phone statement to the CCRB. § 87(2)(b) did not corroborate that any officer told § 87(2)(b) to “shut the hell up.” § 87(2)(b) stated that when he opened his door, § 87(2)(b) who was standing further down the hallway, attempted to approach him, at which time officers instructed her to stand back, causing her to become “loud” and “frustrated.” When the officers began to leave the hallway, and instructed § 87(2)(b) to leave with them, § 87(2)(b) remained loud and frustrated. § 87(2)(b) closed his door as the officers were leaving. After he closed his door, § 87(2)(b) heard someone use the word “fuck” from further down the hallway. § 87(2)(b) did not know who cursed, or whether the voice was male or female (See § 87(2)(b) Nelsons Phone Statement, IA #65).

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Allegation B: Abuse – At § 87(2)(b) Sgt. Danny Aguilar refused to provide his shield number to § 87(2)(b)

Allegation C: Abuse – At § 87(2)(b) PO Edward Bauccio refused to provide his shield number to § 87(2)(b)

Allegation B: Abuse – At § 87(2)(b) PO Robert Warkenthien refused to provide his shield number to § 87(2)(b)

It is undisputed that § 87(2)(b) asked Sgt. Aguilar, PO Bauccio, and PO Warkenthien for their names and shield numbers, and that all three officers provided their names. Whether all three

officers refused to provide their shield numbers is in dispute. The circumstances surrounding the officers' alleged refusals are also in dispute.

In her CCRB testimony, § 87(2)(b) stated that when the officers advised her that they could not knock on the door any further, § 87(2)(b) asked Sgt. Aguilar, PO Bauccio, and PO Warkenthien for their names and shield numbers, and told them that she would be filing a complaint. All three officers verbally provided and spelled their names, which § 87(2)(b) wrote down on a paper. However, when § 87(2)(b) asked Sgt. Aguilar, PO Bauccio, and PO Warkenthien for their shield numbers, the officers allegedly did not respond. When § 87(2)(b) attempted to look at PO Bauccio's shield, he allegedly placed his hand over his shield, preventing § 87(2)(b) from viewing it. When § 87(2)(b) attempted to look at Sgt. Aguilar's shield, he stepped away from her, preventing her from viewing it. This interaction allegedly took place in the hallway (See § 87(2)(b)'s CCRB Statement).

In his CCRB testimony, Sgt. Aguilar stated that § 87(2)(b) followed the officers when they left the hallway and continued to scream at them when they returned downstairs, at which time she asked Sgt. Aguilar for his name and shield number. However, because § 87(2)(b)'s screaming was so pronounced and sustained, Sgt. Aguilar was unable to verbally respond, stating that he "couldn't get a word in." Sgt. Aguilar attempted to display his shield and name plate for § 87(2)(b) by pulling his lapel forward and positioning it towards her. During this time, § 87(2)(b) attempted to approach Sgt. Aguilar. Sgt. Aguilar retreated back by two steps, because § 87(2)(b) was still screaming at him. Sgt. Aguilar did not retreat with the intention of obscuring his shield from § 87(2)(b)'s view. Sgt. Aguilar stated that he only heard § 87(2)(b) ask him for his name and shield. Sgt. Aguilar did not hear § 87(2)(b) ask the other officers for this information, and did not observe any of the officers place their hands over their shields (See Sgt. Aguilar's CCRB Statement).

PO Warkenthien, PO Bauccio, and PO Diaz stated that § 87(2)(b) asked all four officers for their name and shield numbers, and that all four officers verbally provided their names and shield numbers. PO Warkenthien stated that § 87(2)(b) made the request in the hallway. PO Diaz stated that § 87(2)(b) made the request while inside the elevator, as the officers and § 87(2)(b) were returning downstairs. PO Bauccio did not recall exactly when § 87(2)(b) made the request. All three officers stated that no officer attempted to cover their shields or name plates. PO Warkenthien and PO Diaz saw § 87(2)(b) write the information down (See PO Warkenthien's, PO Bauccio's, and PO Diaz's CCRB Statement).

With respect to the officers' alleged refusal to provide their shield numbers, § 87(2)(b) did not observe any verbal or physical interactions between the officers and § 87(2)(b) suggesting that this occurred (See § 87(2)(b) Nelsons Phone Statement, IA #65).

§ 87(2)(g)

Allegation E: Discourtesy - At § 87(2)(b) PO Robert Warkenthien spoke discourteously to § 87(2)(b)

Whether PO Warkenthien spoke discourteously to § 87(2)(b) is disputed.

§ 87(2)(b) stated that after officers refused to provide their shield numbers, she and the officers returned downstairs. At this point, officers continued to question her about her residency at the apartment, and § 87(2)(b) confirmed that she had lived there previously for a period of one to two months. In response, PO Warkenthien allegedly said, “we’re not getting shit for you; we’re not kicking in the door if that’s what you want.” PO Warkenthien then advised her to resolve her dispute in family court. Shortly thereafter, § 87(2)(b) left the scene, despite the officers requesting further information for a report (See § 87(2)(b)’s CCRB Statement).

PO Warkenthien denied saying, “we’re not getting shit for you” to § 87(2)(b). PO Warkenthien stated that after returning downstairs, he attempted to obtain further information from § 87(2)(b) as he was preparing a domestic incident report. However, § 87(2)(b) walked away from the scene without providing any further information (See PO Warkenthien’s CCRB Statement; Board Review – Domestic Incident Report).

Sgt. Aguilar, PO Bauccio, and PO Diaz corroborated PO Warkenthien that no officer on the scene told § 87(2)(b) “we’re not getting shit for you.” (See Sgt. Aguilar’s, PO Bauccio’s, and PO Diaz’s CCRB Statements).

As discussed in the above allegations, § 87(2)(b) only heard an unidentified voice using the word “fuck” in the hallway upstairs, which is different from the discourtesy § 87(2)(b) alleged. § 87(2)(b) could not corroborate either § 87(2)(b)’s or the officers’ statements regarding the alleged discourtesy (See § 87(2)(b) Phone Statement, IA #65).

§ 87(2)(g)

Allegation F: Abuse – Inside the 42nd Precinct stationhouse, Sgt. Yishin Park did not process § 87(2)(b)’s complaint regarding officers.

Whether Sgt. Park refused to process § 87(2)(b)’s complaint regarding officers is disputed.

§ 87(2)(b) stated that after leaving § 87(2)(b), she went to the 42nd Precinct stationhouse. At the stationhouse, § 87(2)(b) approached Sgt. Park at the desk, and told him that she wished to speak with the commanding officer about filing a report against three discourteous officers. Sgt. Park allegedly told § 87(2)(b) that “there was nobody available at this time.” When § 87(2)(b) challenged Sgt. Park, stating that there must be someone at the stationhouse to discuss the complaint, Sgt. Park again said “that person is not here now.” At this time, Sgt. Chen approached

§ 87(2)(b) told Sgt. Park that he would deal with § 87(2)(b) and provided her with a CCRB complaint form (See § 87(2)(b)'s CCRB Statement).

In his CCRB testimony, Sgt. Park acknowledged being posted as the desk sergeant on the day of the incident, but did not recall interacting with § 87(2)(b). Sgt. Park did not recall interacting with any civilians that day who wanted to make a complaint against officers. Sgt. Park's memo book documents that he was away from the desk between 11:35 am and 1:30 pm. Sgt. Park stated that Sgt. Chen covered the desk when he was away (See: Board Review – Sgt. Park's Memo Book; Sgt. Park's CCRB Statement).

In his CCRB testimony, Sgt. Chen acknowledged interacting with § 87(2)(b) at the stationhouse. Sgt. Chen stated that when § 87(2)(b) appeared at the desk, he was in the process of relieving Sgt. Park. § 87(2)(b) asked Sgt. Chen for Sgt. Aguilar's and PO Warkenthien's shield numbers and name spellings. Sgt. Chen gave § 87(2)(b) this information in writing, gave her a CCRB complaint form, and provided instructions on completing the form. Sgt. Chen did not recall observing any verbal interaction between Sgt. Park and § 87(2)(b) at the stationhouse (See Sgt. Chen's CCRB Statement).

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date